

Alexis Mager Lakusta,
in propria persona
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E-filing

FILED

MAY 25 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

EC 07 3085

In re:

Alexis Mager Lakusta,

Debtor, Appellant

v.

Mark H. Evans, et al.,

Appellees

Case No.: No. 02-31521

Chapter 7

Adv. Proc. No. ~~03-3549 TC~~
TML.

CW

NOTICE OF APPEAL

Pursuant to the dismissal-without-prejudice order signed by the Honorable Sandra Brown Armstrong, United States District Judge, on March 27, 2007 (copy attached), Alexis Mager Lakusta hereby re-files his appeal from the ORDER DENYING DEBTOR'S MOTION FOR ABANDONMENT issued by United States Bankruptcy Judge Thomas E. Carlson and entered on May 12, 2006. This appeal is made under 28 U.S.C. section 158 (a).

A copy of the order being appealed from accompanies this Notice of Appeal. Also being filed with this Notice of Appeal, pursuant to Federal Rules of Bankruptcy Procedure, Rule 8001(e), is a separate statement of election to have this appeal heard by the United States District Court.

To avoid duplication of effort and expense, appellant additionally requests that the U.S. District Court Clerk assign this case to the Honorable

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1 William H. Alsup, to whom appellant's appeal from the status conference
2 order issued in connection with appellants's MOTION FOR ABANDONMENT
3 has been assigned.

4 The names of all parties to the order being appealed from, and the
5 names, addresses, and telephone numbers of their respective attorneys,
6 where applicable or known, are:

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9 [former counsel to Charles E. Sims, Trustee, deceased]
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20 333 W. El Camino Real
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22 (408) 720-7007
23 counsel: unknown

24 Dated: May 24, 2007 Signed: Alexis Mager Lakusta
25 Alexis Mager Lakusta,
in propria persona
1259 El Camino Real #245
Menlo Park, CA 94025
(650) 566-9971

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

MAR 27 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN RE

No. C 06-03431 SBA

ALEXIS MAGER LAKUSTA,

ORDER

Debtor.

Debtor Alexis Mager Lakusta commenced the instant bankruptcy appeal pro se in this Court on May 26, 2006 by filing a notice of appeal. Federal Rule of Bankruptcy Procedure 8006 requires

[a]ny party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost.

FED. R. BANKR. P. 8006. There is no indication that Lakusta has provided the clerk with copies of the items designated on October 11, 2006. *See* Docket No. 11. Specifically, transcripts of hearings have not been received by this Court.

On November 16, 2006, and January 9, 2007, this Court extended the briefing schedule to allow Lakusta time to file his Opening Brief. On January 31, 2007, Lakusta filed an Opening Brief that this Court finds unintelligible. In a letter to the Court on February 21, 2007, Lakusta stated that "[his] Amended Opening Brief will be provided to the Court and to all those on the service list very shortly."

Over one month has passed and the Court has neither received an Amended Opening Brief nor an Amended Designation of Record that includes copies of the items listed.

LEGAL STANDARD

Federal Rule of Bankruptcy Procedure 8006 requires appellants in bankruptcy appeals to meet certain filing deadlines. Additionally, the requirement of perfection of the record in Rule 8006 serves "to provide the reviewing court with an adequate basis for evaluating the appellant's claims" on a bankruptcy appeal. *In re CPDC Inc.*, 221 F.3d 693, 698 (5th Cir. 2000). It also serves "to put the appellee on notice

Entered on Civil Docket **MAR 28 2007**

1 as to which issues it must defend against and whether the appellant's designation of issues will produce
2 a record adequate for the appellate court." *In re Winders*, 202 B.R. 512, 516 (D. Kan. 1996). "The
3 burden of creating an adequate record rests with the appellant, who may not urge an issue on appeal if
4 he has failed to provide the appellate court with the requisite record excerpts." *In re CPDC Inc.*, 221 F.3d
5 at 698. *See also In re Winslow*, 121 B.R. 598, 599 (D. Colo. 1990) (a court may dismiss an appeal or
6 affirm the basis of the bankruptcy court's decision when an appellant fails to designate critical parts of
7 the record).

8 District courts acting in an appellate capacity in relation to bankruptcy court decisions have the
9 discretion to dismiss a bankruptcy appeal for non-compliance with Rule 8006. *Fitzsimmons v. Nolden*
10 (*In re Fitzsimmons*), 920 F.2d 1468, 1471 (9th Cir. 1989) (affirming dismissal of appeal for failure to
11 comply with Bankruptcy Rule 8006 where appellant's conduct was dilatory and egregious). *See also* Fed.
12 R. Bank. Proc. 8001(a); L.R. 8011-1. Pro se appellants are obligated to comply with the Bankruptcy
13 Rules in the same way as the other litigants are. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)
14 ("Pro se litigants must follow the same rules of procedure that govern other litigants.").

15 ANALYSIS

16 In his Designation of the Record for Matters on Appeal, Lakusta designates numerous motions,
17 memorandums, transcripts, and judgments. However, Lakusta has not provided the clerk of the Court
18 with a copy of the documents listed in his designation, nor has he paid the bankruptcy court to make
19 copies for him, as required by Rule 8006.

20 The Court notes that Lakusta's statement of the issues to be presented on appeal is unintelligible.
21 Lakusta filed a motion to compel the trustee to abandon claims of the estate against Mark Evans and other
22 parties. The Bankruptcy Court denied the motion because the claims alleged under the two adversary
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1 proceedings had already been decided.¹ Under the circumstances presented, the Court has the discretion
2 to dismiss the appeal. *See Fitzsimmons*, 920 F.2d at 1472-73.


3 CONCLUSION

4 Accordingly,

5 IT IS HEREBY ORDERED that this case is DISMISSED WITHOUT PREJUDICE as to
6 Lakusta's ability to re-file the appeal when he is prepared to proceed in compliance with the Federal
7 Rules of Bankruptcy Procedure.

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9 IT IS SO ORDERED.

10 Dated: 3-27-067

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12 SAUNDRA BROWN ARMSTRONG
13 United States District Judge
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23 ¹ The Memorandum re Debtor's Motion for Abandonment sheds some light on the issue:

24 The first of the two adversary proceedings identified was dismissed; the second resulted
25 in a judgment against Lakusta and the estate. Debtor, who had prosecuted the action on
26 behalf of the estate, filed a motion for relief from judgment that was denied, but did not
27 appeal either the judgment or the order denying relief from judgment. Debtor now seeks
28 to file a new suit against Evans and other parties for claims arising out of the same
transaction as that involved in the action tried to judgment, stating that he "believes there
may be grounds to set aside the judgment."

Docket No. 4, Ex. 1, at 1-2.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

IN RE ALEXIS AGER LAKUSTA et al,
Plaintiff,

Case Number: CV06-03431 SBA

CERTIFICATE OF SERVICE

v.

IN RE ALEXIS AGER LAKUSTA et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 27, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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U.S. Bankruptcy Court, No. District of CA (San Francisco)
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for the Northern Dist. of CA
235 Pine St
P.O. Box 7341
San Francisco, CA 94104

Dated: March 27, 2007

Richard W. Wicking, Clerk
By: LISA R CLARK, Deputy Clerk



Signed and Filed: May 11, 2006

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

ALEXIS MAGER LAKUSTA,

Debtor.

) Case No. 02-31521 TC
)
) Chapter 7
)
) Date: May 12, 2006
) Time: 9:30 a.m.
) Ctrm: Courtroom 23
)
)

ORDER DENYING DEBTOR'S MOTION FOR ABANDONMENT

Upon due consideration, and for the reasons stated in the accompanying memorandum, the court hereby issues the following order regarding Debtor's motion to compel abandonment of certain legal claims (the Motion).

(1) The hearing on the Motion, which was scheduled for May 12, 2006 at 9:30 a.m., is hereby vacated.

(2) The Motion is denied.

(3) Pursuant to 11 U.S.C. § 554, none of the legal claims that the estate may have against any party shall be abandoned upon the closing of the case.

(4) The Order Granting Limited Relief From Stay entered by this court on April 18, 2006 is hereby vacated. Any action that

ORDER DENYING DEBTOR'S
MOTION FOR ABANDONMENT

1 was filed pursuant to that Order (New Action) is therefore subject
2 to the automatic stay of 11 U.S.C. § 362(a) from this date forward.

3 (5) Because the claims involved in any New Action have not
4 been abandoned, Trustee remains the real plaintiff in any New
5 Action. Trustee shall sign and submit for filing in any New Action
6 a motion or notice of dismissal prepared by one or more of the
7 defendants to such New Action.

8 **END OF ORDER**
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ORDER DENYING DEBTOR'S
MOTION FOR ABANDONMENT

Court Service List

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PROOF OF SERVICE BY MAIL

Case Name: In re Alexis Mager Lakusta

Case Number: BK Case No. 02-31521

Gary M. Hess declares:

I am over the age of 18 years, not a party to this action, and I am employed at Shmoover Movers in Menlo Park, California.

On May 25, 2007, I placed for collection and mailing, at Menlo Park, California, a copy of the attached:

NOTICE OF APPEAL

**STATEMENT OF ELECTION TO HAVE APPEAL
HEARD BY THE U.S. DISTRICT COURT**

in a sealed envelope, with postage thereon fully prepaid, addressed to:

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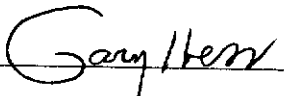
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I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: May 25, 2007



Gary M. Hess